



UNITED STATES DEPARTMENT OF COMMERCE
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09/366,081

SERIAL NUMBER 09/366,081	FILING DATE 08/02/99	FIRST NAMED APPLICANT BRENNER	ATTORNEY DOCKET NO. SUZ-04RE
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HM12/0124

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EXAMINER SHIBUYA, M	
ART UNIT 1635	PAPER NUMBER

9
01/24/01

DATE MAILED:

Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

THE PERIOD FOR RESPONSE:

a) is extended to run 5 months or continues to run _____ from the date of the final rejection
b) expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

Appellant's Brief is due in accordance with 37 CFR 1.192(a).
 Applicant's response to the final rejection, filed 1/4/01, has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:

a. There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
b. They raise new issues that would require further consideration and/or search. (See Note).
c. They raise the issue of new matter. (See Note).
d. They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
e. They present additional claims without cancelling a corresponding number of finally rejected claims.

proposed

NOTE: *The replacement Sequence Listing raises possible issues of new matter in regards to said SEQ ID replacements, including new SEQ ID 17-19. Amendment to the specification raise possible issues of new matter because it is unclear that the specification sequence and the new SEQ ID match and because SEQ ID Nos. 9+10 have been deleted from col. 25. Furthermore,*

2. Newly proposed or amended claims 1-4 + 10-13 would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.
3. Upon the filing an appeal, the proposed amendment will be entered will not be entered and the status of the claims will be as follows:

Claims allowed: 1-4 + 10-13

Claims objected to: None

Claims rejected: 5, 6, 8, 9

However:

Applicant's response has overcome the following rejection(s): None

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4. The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because *proposed claim amendments to overcome new matter rejections raise new considerations and require new search.*

5. The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

The proposed drawing correction has has not been approved by the examiner.

Other amendments proposed for claims 5, 8, + 9 to now recite DNA fragments are improper in form because the deleted term "genomic" does not appear and is not indicated in the claims. Also, deletion replacement of "genomic DNA fragment" by "simply-DNA fragment" represents an expansion in scope, including "synthetic oligonucleotides" (see response dated 5/13/00 at p. 4), that would require further consideration and search.